

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of AT&T Inc. for Forbearance	)	WC Docket No. 07-21
under 47 U.S.C. § 160(c) from	)	
Enforcement of Certain of the	)	
Commission's Cost Assignment Rules.	)	

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**REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

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The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>1</sup> offers these brief reply comments on other parties’ submissions in response to the Federal Communications Commission’s (“FCC” or “Commission”) request for comments on AT&T Inc.’s (“AT&T’s”) request for forbearance from the Commission’s cost assignment rules.<sup>2</sup> NASUCA filed brief initial comments opposing AT&T’s petition, and recommending that the issues raised by AT&T be refereed to a federal-state joint board.<sup>3</sup> The comments filed by other parties reinforce NASUCA’s views.

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<sup>1</sup> NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio. Rev. Code Chapter 4911; 71 Pa.Cons.Stat. Ann. § 309-4(a); Md. Pub.Util.Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

<sup>2</sup> DA 07-731.

<sup>3</sup> NASUCA Comments at 1-2.

To begin, it is important to point out that only one party supported AT&T's petition: the United States Telecom Association ("USTA").<sup>4</sup> USTA's comments are replete with mixed metaphors, including clogged pipes<sup>5</sup> and tangled regulatory underbrush,<sup>6</sup> but fall in their assumption that the regulations under examination here are a "*direct detriment to consumers*, who shoulder the ultimate burden of regulation-driven market inefficiencies."<sup>7</sup> As the opposing comments show, the regulations in question are still needed to **protect** consumers from AT&T's market dominance.

Oppositions came from consumers,<sup>8</sup> rural wireline telephone companies,<sup>9</sup> competitive telecommunications companies,<sup>10</sup> and wireless companies.<sup>11</sup> Serious questions were raised by state regulators, who would be limited in their activities by a grant of AT&T's petition.<sup>12</sup>

Among the key points raised by the opposing and questioning comments were:

- The continued reliance on allocated costs for state rate regulation, contrary to AT&T's claims.<sup>13</sup>

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<sup>4</sup> These supporting comments show the dominance of AT&T over this national association. As discussed here, one of the opposing comments comes from a group of small rural companies.

<sup>5</sup> USTA Comments at 2.

<sup>6</sup> Id.

<sup>7</sup> Id. (emphasis in original).

<sup>8</sup> NASUCA, NASUCA member the Texas Office of Public Utility Counsel ("TOPC") and the Ad Hoc Telecommunications Users Committee ("Ad Hoc").

<sup>9</sup> Nebraska Rural Independent Companies ("NRIC").

<sup>10</sup> Time Warner Telecom Inc. ("Time Warner").

<sup>11</sup> Sprint Nextel Corporation ("Sprint").

<sup>12</sup> State Members of the Federal-State Joint Board on Separations ("State Members") and the Public Service Commission of Wisconsin ("PSCW").

<sup>13</sup> TOPC Comments at 2-3; NRIC Comments at 2-3. Indeed, as State Members point out, even if the Commission grants AT&T's petition, states will still have to perform much the same functions as required by state law. State Members Comments at 8. See also id. at 9-10 (eliminating cost allocation rules would eliminate carriers' ability to assert confiscation as an objection to state action).

- The continued importance of allocated costs under federal price cap regulation.<sup>14</sup>
- The continued importance of allocation in the Commission's special access and other proceedings.<sup>15</sup>
- AT&T's (and other regional Bell Operating Companies') reliance on the use of allocated costs when it suits their purposes.<sup>16</sup>

And to put the kibosh on the arguments about clogged pipes and entangling underbrush, NRIC points out that the supposedly burdensome regulations represent only 0.02% of AT&T's total revenues.<sup>17</sup> These regulations are needed, in keeping with USTA's metaphors, in order to ensure that the water (dollars) flows in the right direction, and that the expanding branches of the AT&T plant do not choke off the rest of the vegetation. Or, as the State Members state, "The tree of cost allocation may have lost some limbs ... but if that tree still supports other data or necessary regulatory functions, it would be unwise to cut it down."<sup>18</sup>

Indeed, as Sprint states, "Cost data are essential not only to assess the efficacy of the current price cap plan and to recalibrate current price cap levels, but also to provide evidence regulators need to detect and take enforcement actions against anticompetitive conduct in deregulated environments."<sup>19</sup> And as Time Warner states, "As long as the

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<sup>14</sup> Ad Hoc comments at 13-15.

<sup>15</sup> Id. at ii-iii; see also Sprint Comments at 5-8; Joint Members Comments at 5. Indeed, as Ad Hoc points out, doing away with the allocation rules would conflict with the Commission's representations to the U.S. Court of Appeals for the D.C. Circuit regarding that proceeding. Ad Hoc Comments at 12.

<sup>16</sup> Id. at 6-7.

<sup>17</sup> NRIC Comments at 6. This also addresses the State Members' remark that "AT&T plausibly asserts that cost allocation rules ... continue to impose very significant costs upon its operations." State Members Comments at 4.

<sup>18</sup> Id.

<sup>19</sup> Sprint Comments at 2.

ILECs including AT&T retain market power and the Commission is statutorily bound to ensure that ILECs charge just, reasonable and not unjustly or unreasonably discriminatory rates, ILEC rates must be based to some extent on cost.”<sup>20</sup> AT&T has failed to show that it meets the statutory standards for forbearance.<sup>21</sup>

## CONCLUSION

AT&T has not demonstrated that its petition meets the requirements of 47 U.S.C. 160. Indeed, the opposing comments show that the standards for forbearance have not been met. The petition should be denied, and the issues should be referred to the Federal-State Joint Board on Separations.<sup>22</sup>

Respectfully submitted,

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<sup>20</sup> Time Warner Comments at 2; see also NRIC Comments at 2.

<sup>21</sup> Sprint Comments at 8-22

<sup>22</sup> See generally PSCW Comments.